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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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11 PEOPLE OF THE STATE OF
12 CALIFORNIA *ex rel.* BILL LOCKYER,

13 Plaintiff,

14 v.

15 UNITED STATES FOREST SERVICE, et
16 al.,

17 Defendants.
18 _____/

No. C 04-02588 CRB

ORDER OF DISMISSAL AS MOOT

19 On July 11, 2005, the Court issued an Order finding that the 2004-2005 Sequoia
20 National Forest Fire Plan ("2004 Fire Plan") was a decisional document subject to the
21 provisions of the National Environmental Policy Act ("NEPA"), and because no NEPA
22 review had been conducted, the Court concluded that the 2004 Fire Plan violated NEPA.
23 The Court remanded the matter to defendants to achieve compliance by April 10, 2006. On
24 that date, defendants submitted to the Court a 2006-2007 Fire Plan that incorporated its
25 efforts to bring the 2004 Fire Plan into compliance with NEPA. Subsequently, defendants
26 decided to withdraw the Fire Plan in its entirety, and they then sought (and received) from the
27 Chief of the Forest Service a waiver of the Forest Service Manual provision requiring a fire
28 management plan for the Sequoia National Forest. On June 6, 2006, defendants notified the
Court of that decision and requested that the Court dismiss this action as moot. The Court
asked for supplemental briefing from the parties on the issue of mootness. After carefully

1 considering these memoranda, the Court finds that this matter is now moot and is hereby
2 DISMISSED.

3 DISCUSSION

4 Under Article III of the United States Constitution a foundational predicate to the
5 exercise of judicial power is that a “case or controversy” must exist for the duration of an
6 action. See, e.g., United States Parole Comm’n v. Geraghty, 445 U.S. 388, 397 (1980). A
7 case is moot where “the issues presented are no longer ‘live’ or the parties lack a legally
8 cognizable interest in the outcome.” Id. at 396 (quoting Powell v. McCormack, 395 U.S. 486,
9 496 (1969)). The Ninth Circuit has stated that the “basic question in determining mootness is
10 whether there is a present controversy as to which effective relief can be granted.”
11 Northwest Environmental Defense Center v. Gordon, 849 F.2d 1241, 1244 (9th Cir. 1988).
12 A court sitting in equity deciding a mootness issue must not consider whether the “precise
13 relief sought at the time the application for an injunction was filed is still available” but
14 “whether there can be *any* effective relief.” Id. at 1244-45 (emphasis in original). This
15 steadfast requirement is borne out of a court’s duty to avoid rendering advisory opinions.
16 See Preiser v. Newkirk, 422 U.S. 395, 401 (1975) (stating that the judgments of federal
17 courts “must resolve a real and substantial controversy admitting of specific relief through a
18 decree of a conclusive character, as distinguished from an opinion advising what the law
19 would be upon a hypothetical state of facts”) (internal quotations and citations omitted).

20 Plaintiff objects to defendants request for the Court to dismiss this matter as moot and
21 instead urges the Court to “permanently enjoin the Forest Service from issuing any NEPA-
22 noncompliant fire plan for Sequoia National Forest in the future.” Pl.’s Opp. at 2. Plaintiff
23 contends that defendants withdrew the Fire Plan as a direct result of this litigation,¹ and that
24 two exceptions to the mootness doctrine apply here: 1) voluntary cessation and 2) “capable of

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26 ¹Plaintiff identifies several reasons in support of its assertion that defendants have
27 withdrawn the Fire Plan in response to litigation. Pl.’s Opp. at 4. Of particular importance, the
28 Court notes that defendants withdrew the plan *before* receiving a waiver of the Forest Service
Manual’s requirement to issue a fire management plan in the Sequoia National Forest; and
defendants have not withdrawn other fire plans that are not subject to adverse rulings from
courts.


1 repetition, yet evading review.” While the Court does not dispute that defendants’ actions
 2 resulted purely as a response to this litigation, defendants’ decision to withdraw the Fire Plan
 3 nevertheless renders the Court incapable of providing “effective relief.” Accordingly, the
 4 Court need not address whether an exception to the mootness doctrine applies, because even
 5 if it did, the Court would only be capable of issuing an impermissible advisory opinion.

6 Plaintiff’s own suggested wording for a proposed permanent injunction highlights the
 7 speculative nature of any order the Court might render, which would be based entirely on a
 8 hypothetical set of facts.² First and foremost, the effective mandate of such an order is
 9 essentially to direct the Forest Service to follow the law, which it remains obligated to do
 10 regardless of the outcome of this case. Second, plaintiff’s claim is no longer ripe for review.
 11 The withdrawal of the 2006 Fire Plan removes any semblance of a relevant and applicable
 12 factual record that can be analyzed to determine whether and to what extent relief is
 13 appropriate. Any injunction at this point would be untethered to an existing controversy or
 14 factual record. Finally, such an overbroad injunction would amount to an advisory opinion
 15 since there is no current fire plan to evaluate and there is no indication that there will be one
 16 in the future that even resembles the one at issue in this case. The hypothetical situation
 17 plaintiff anticipates is far too vague and remote to warrant an injunction.

18 Accordingly, the Court finds that this matter is moot because effective relief is no
 19 longer achievable. Thus, the case is hereby DISMISSED.

20 **IT IS SO ORDERED.**

21
 22 Dated: July 20, 2006


 CHARLES R. BREYER
 UNITED STATES DISTRICT JUDGE

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 25 ²Plaintiff’s proposal is as follows:

26 It is ORDERED that defendant United States Forest Service is permanently enjoined
 27 from issuing a Fire Management Plan or other decisional document for [the] Sequoia
 28 National Forest that encompasses wildland fire management policies unless and until the
 Forest Service fully complies with NEPA, as set forth in the Court’s July 11, 2005
 liability order.

Pl.’s Opp. at 8.

United States District Court

For the Northern District of California

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